



IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

LUFKIN DIVISION

DALE DEVON SCHEANETTE, #999440 §

VS. §

CIVIL ACTION NO. 9:05cv179

DOUGLAS DRETKE, ET AL. §

ORDER OF DISMISSAL

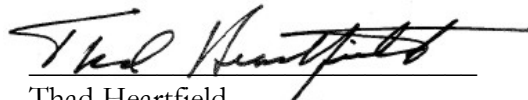
Plaintiff Dale Devon Scheanette, a death row inmate confined in the Texas prison system, proceeding *pro se* and *in forma pauperis*, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. He complained that death row inmates are not provided educational opportunities, including the opportunity to take a G.E.D. test. The complaint was referred to United States Magistrate Judge Harry W. McKee, who issued a Report and Recommendation concluding that the lawsuit should be dismissed. The plaintiff has filed objections.

The Report and Recommendation of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by the plaintiff, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the objections by the plaintiff are without merit. The plaintiff asserted in his objections that his Americans With Disabilities Act arguments were not adequately addressed. He noted that he cannot walk. However, he admitted that educational opportunities are being denied because he is a death row inmate. Magistrate Judge McKee correctly noted that he does not have a basis for an ADA claim since he has not shown that anyone discriminated against him due to a physical disability. *Hall v. Thomas*, 190

F.3d 693, 696 (5th Cir. 1999); *Jernigan v. Dretke*, H-04-4672, 2005 WL 1185627 at \*3 (S.D. Tex. Apr. 29, 2005). He is being denied educational opportunities because of his status as a death row inmate. The objections lack merit. Therefore the Court adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

**ORDERED** that the cause of action is **DISMISSED** with prejudice pursuant to 28 U.S.C. § 1915A(b)(1). All motions by either party not previously ruled on are hereby **DENIED**.

**SIGNED** this the **10** day of **November, 2005**.

  
Thad Heartfield  
United States District Judge